



**US Army Corps
of Engineers®**
New England District

PUBLIC NOTICE

Date: June 10, 2008

Comment Period Ends: July 10, 2008

File Number: NAE-2008-1703

In Reply Refer To: Ruth M. Ladd

Or by e-mail: ruth.m.ladd@usace.army.mil

696 Virginia Road
Concord, MA 01742-2751

The District Engineer has received a prospectus for an umbrella mitigation bank from the Maine Department of Transportation to **develop an umbrella mitigation banking instrument**. The Corps is soliciting comments on the prospectus.

SPONSOR: Maine Department of Transportation (MaineDOT), State House Station 16, Augusta, ME 04333-0016

MaineDOT proposes to establish an umbrella mitigation bank with the entire State of Maine as a service area. If the prospectus is deemed sufficient, the bank will be established through the development of an umbrella mitigation banking instrument to be signed by the sponsor, the Corps, and other agencies which choose to do so, which will cover the entire State of Maine. The process will follow 33 CFR 332, Compensatory Mitigation for Losses of Aquatic Resources ("Mitigation Rule"). The Mitigation Rule was published in the Federal Register on April 10, 2008.

The purpose of the umbrella bank will be to provide a framework within which future restoration, creation, enhancement, and/or preservation projects will be made available as potential mitigation for transportation projects affecting waterways and wetlands. The umbrella bank and its specific projects could provide an alternative to permittee-responsible and In-lieu fee aquatic resource mitigation for unavoidable impacts authorized under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The "umbrella" format allows consolidation of reporting and tracking of specific projects to be proposed in the future. The entire prospectus, entitled "**Maine Department of Transportation Umbrella Wetland Mitigation Bank Prospectus**," is attached to this Public Notice.

The decision whether to authorize the sponsor to proceed to the next step of developing a draft banking instrument will be based on the District Engineer's determination of the potential of the proposed bank to provide compensatory mitigation for activities authorized by Department of the Army permits. In the case of this umbrella bank proposal, the determination must be that the objectives of the bank have merit, the structure of the bank as proposed is appropriate, the proposed service area is acceptable, there is need for a mitigation bank, the proposed ownership and long-term management concepts are acceptable, and the sponsor's qualifications are adequate. Since there are no specific sites proposed yet because the umbrella concept has not yet been approved, the ecological suitability and long term sustainability of sites will only be addressed in subsequent project submittals after the sponsor has been notified if and when a draft banking instrument can be developed.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed

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activity. Any comments received will be considered by the Corps of Engineers to determine whether to allow the sponsor to proceed to develop a draft banking instrument. Comments are also used to determine the need for a public hearing.

As this prospectus is procedural and no work in aquatic resources is proposed, the District Engineer has determined that there is no likelihood for the proposed prospectus to impinge upon properties with cultural or Native American significance, or listed in, or eligible for listing in, the National Register of Historic Places. Therefore, no further consideration of the requirements of Section 106 of the National Historic Preservation Act of 1966, as amended, is necessary.

In order to properly evaluate the proposal, we are seeking public comment. Anyone wishing to comment is encouraged to do so. **Comments should be submitted in writing by July 3, 2008.** If you have any questions, please contact Ruth M. Ladd at (978) 318-8818, (800) 343-4789 or (800) 362-4367, if calling from within Massachusetts.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for a public hearing shall specifically state the reasons for holding a public hearing. The Corps holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public. The Corps, in cooperation with MaineDOT, is holding a public meeting to provide information on the federal Mitigation Rule as it pertains to mitigation banking and on this specific proposal and to entertain questions and hear comments on the proposal. It is scheduled for June 19, 2008 at 3:00 PM in the Main Conference Room at the Maine Department of Transportation headquarters located at 24 Child Street, Augusta, Maine. This will be less formal than a public hearing.

The initial determinations made herein will be reviewed in light of facts submitted in response to this notice. All comments will be considered a matter of public record. Copies of letters of objection will be forwarded to the applicant who will normally be requested to contact objectors directly in an effort to reach an understanding.

For more information on the New England District Corps of Engineers programs, visit our website at <http://www.nae.usace.army.mil>.

THIS NOTICE IS NOT AN AUTHORIZATION TO DO ANY WORK.


CHRISTINE A. GODFREY
for Chief, Regulatory Division

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If you would prefer not to continue receiving Public Notices, please contact Ms. Tina Chaisson at (978) 318-8058 or e-mail her at bettina.m.chaisson@usace.army.mil. You may also check here () and return this portion of the Public Notice to: Bettina Chaisson, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751.

NAME: _____
ADDRESS: _____

Maine Department of Transportation Umbrella Wetland Mitigation Bank Prospectus

May 14, 2008



Prepared by: Deane C. Van Dusen, Manager
Field Services & Mitigation Division
Environmental Office
Maine Department of Transportation
16 State House Station
Augusta, Maine 04333

1.0 Introduction

The Maine Department of Transportation (MaineDOT) proposes to establish the Umbrella Mitigation Bank for Transportation (UMBT). The purpose of the UMBT is to provide a framework under which site specific mitigation deposits are established to be used as compensation for unavoidable wetland impacts resulting from state transportation projects within Maine.

MaineDOT is developing the UMBT to proactively implement restoration, creation, enhancement and preservation opportunities currently identified in the state as well as future options. Potential UMBT projects will be developed and proposed under terms of a Mitigation Banking Instrument (BI) currently under preparation.

2.0 Bank Objectives

MaineDOT's goals in establishing the UMBT are: 1) to streamline the Section 404 permit evaluation process by providing a means of compensating in advance for unavoidable wetland impacts resulting from state transportation projects; 2) to provide high value mitigation based on the ecological/landscape approach; 3) to preserve and restore resources based on state-wide priorities; and 4) to follow mitigation priorities established by the U. S Corps of Engineers (Corps)(33 CFR Part 332) and Environmental Protection Agency's (EPA)(40 CFR Part 230) Compensatory Mitigation for Losses of Aquatic Resources (hereafter "the Rule"). This ruling gives priority to mitigation banking followed by in lieu fee and permittee-responsible wetland compensation options. The Rule also improves the planning, implementation and management of mitigation projects by emphasizing a watershed approach along with the ecological benefits derived from mitigation banking.

Since December 2004, MaineDOT has operated the only state-approved wetland mitigation bank in Maine, which is administrated by the Maine Department of Environmental Protection (DEP) under Natural Resource Protection Act (NRPA) permit #L-21760-MB-A-N. Because this bank's current deposits contain only excess DEP mitigation credit the two banks will be maintained separately. New deposits consisting of both federal and state credit will use the UMBT. The UMBT "deposits" would augment MaineDOT's state mitigation bank.

Section 480-Z of Maine's NRPA (38 M.R.S.A. §§ 480 A-BB) authorizes DEP to establish and operate an in lieu fee program for natural resource mitigation. Extensive input from an interagency workgroup that included representatives from DEP, state and federal resource agencies, Corps, Maine State Planning Office, Federal Highway Administration and MaineDOT resulted in Maine's in lieu fee program becoming active in 2007. The UMBT is expected to provide complementary benefits to the in lieu fee program by augmenting or adding to its efforts to restore, enhance, replace, and preserve aquatic resources based on state-wide priorities established by state and federal resource agencies, non-governmental conservation organizations and state planning agencies.

MaineDOT's need for the UMBT is based on 4 points: 1) responds to the new Corps/EPA Rule prioritizing use of wetland banks; 2) provides an opportunity to build landscape/watershed scale mitigation projects based on state-wide priorities; 3) potential for more cost-effective mitigation based on project scale and site specific parameters; and 4) mitigation planning and construction for large scale regional transportation projects and biophysical regions where a number of road projects are forecasted.

3.0 Establishment and Operation

3.1 Mitigation Banking Instrument (BI)

The BI and the development and operation of the UMBT will be in accordance with the Rule. MaineDOT's responsibilities under the program will be administered by MaineDOT's Environmental Office – Field Services and Mitigation Division.

MaineDOT proposes to use a combination of restoration, creation, enhancement and preservation of a wide variety of aquatic resources and upland buffers for the purpose of generating compensation credits. MaineDOT will provide for long-term preservation and management of the project areas included in the UMBT.

The UMBT will be used for MaineDOT/private or public transportation related partnerships involving compensatory mitigation for unavoidable impacts to waters of the United States in the State of Maine. These activities are authorized under Section 404 and 401 of the Clean Water Act, and/or Section 10 of the River and Harbors Act and the DEP Chapter 310 of the NRPA, provided such use has complied with all applicable requirements and is authorized by the appropriate authority.

3.2 Site Development Plans

Mitigation sites included in the BI will be designed by developing conceptual and final site development plans ("Plans") that will be submitted to the Interagency Review Team (IRT) for review and approval on a project by project basis. This team makeup will follow the Federal Guidance recommendations. Project sites can be built in advance of the UMBT deposit as long as the initial plan concepts are approved by the IRT, with confirmation in writing from the Corps District Engineer (DE). Projects built in advance for some other purpose than mitigation banking, and meet Federal Guidance criteria as bank projects, will not be approved by the IRT.

Development of the mitigation sites will begin with the submission of conceptual plans to the IRT for evaluation. If the IRT's review of the conceptual plans is favorable and the projects are determined to be feasible, MaineDOT will proceed with preparing the final plans. Once developed, the final plans will be submitted to the IRT for review and approval.

Upon approval, the final plans for the mitigation sites will be attached as an Addendum to the BI, and the mitigation sites will become a component of the BI. Credits will be

released consistent with the schedule of credit availability in accordance with the final plans. Approved bank sites or approved phases of the bank sites may be left undeveloped until a credit use is identified and approved by the regulatory agencies.

In the event the final plans are not approved, the IRT will provide MaineDOT with specific reasons for not approving the submittals. MaineDOT may resubmit revised final plans with specific modifications or justifications that address the IRT concerns.

3.3 Real Estate Provisions

MaineDOT will provide for the perpetual protection and preservation of each bank site through management agreements, restrictive covenants with 3rd party enforcement or conservation easements. These provisions will conform to the current NE District of the Corps guidance with the language modified on a case-by-case basis to allow for existing elements such as road easements, road/bridge crossings, hike/bike trails and other activities. Each real estate instrument used must be approved by the IRT. MaineDOT will record a restrictive covenant, easement or similar management agreement for each site added to the UMBT by addendum. This agreement may also be transferable with DE approval, to an acceptable conservation organization (federal, state, private) upon fulfillment of the project objectives.

3.4 Establishment of Credits

An evaluation of the conceptual plan of each bank site will be performed by the IRT to determine an approximation of the credits the MaineDOT could reasonably expect as a result of the proposed mitigation site. This evaluation will provide the justification for continuing with the proposed mitigation site.

The final calculation of credits generated as a result of the individual mitigation sites will be determined by the IRT based on the final plan for each mitigation site as approved by the IRT. Each final plan will describe the design to be implemented accompanied by the credit accounting approved by the IRT. The deposit of site credits in the BI will be implemented via a BI addendum.

3.5 Use of Credit

The following types of projects may be eligible to use the UMBT:

MaineDOT projects that require authorization under the Corps with a Category II or Individual Permit (IP) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act and/or Permit-by-Rule (PBR), Tier II, IP under DEP Chapter 310 of NRPA, and a Land Use Regulations Commission (LURC) Full Permit under Section 10.25,P,1,b,(2), in consultation with the other regulatory and resource agencies. These regulatory agencies will determine the eligibility of such projects to use the UMBT on a case-by-case basis. Once the Corps and/or DEP have determined that mitigation in the

UMBT is ecologically preferable to other options, mitigation may be provided by the use of the mitigation credit from the UMBT.

3.6 Crediting/Debiting and Accounting Procedures

MaineDOT will be responsible for accounting for credits and debits in the UMBT. MaineDOT will use a separate ledger for each mitigation bank site. The accounting ledger will be developed in consultation with the IRT. The MaineDOT and IRT will follow the guidelines established by the Corps and EPA in the Rule for accounting procedures.

Each credit for mitigation will be comprised of the appropriate accounting metric determined via the IRT consistent with the terms of the BI or plan addenda, unless modified in future guidelines established through mitigation guidance documents prepared by the permitting agencies.

4.0 Disclaimer

The BI will not in any manner supersede or alter the statutory authorities and responsibilities, regulations, policies and guidance of the signatory agencies or any other agency.

5.0 Geographic Service Area

The geographic service area (GSA) for the UMBT will be statewide. Specific plans will identify which of the state's 19 biophysical region(s) will be serviced by a specific project (see attached Bailey's Ecoregional Provinces, Sections, and Subsections of Maine – Maine Natural Areas Program (MNAP) 2008).

6.0 MaineDOT's Obligations

MaineDOT agrees to:

1. Establish and/or maintain the mitigation sites and ownership until:
 - a. Banking activity is voluntarily terminated through written notice by MaineDOT with the approval of the IRT, or
 - b. A third party stewardship organization adopts the responsibilities of long-term site management/maintenance with DE approval.
2. Submit to the IRT an annual report describing the condition of each mitigation site in relation to the success criteria outlined in the final plan and credit/debit ledgers for each bank site.
3. Develop necessary adaptive management plans and/or implement appropriate remedial actions for mitigation sites in coordination with the IRT in the event a mitigation site fails to achieve the success criteria specified in the final plan.

7.0 IRT's Obligations

The IRT agrees to follow the time frames defined in the Rule on regulations governing compensatory mitigation.

8.0 Permits

MaineDOT will obtain all documentation, permits and other authorizations required to establish and maintain the UMBT.

9.0 MaineDOT's Qualifications

MaineDOT is the largest development entity in the state with 25 years of experience in wetland mitigation project development. The department has built some 85+ sites during its tenure ranging in size from 158 s/f to 1050 acres. A dedicated Mitigation Unit staff has consistently provided high quality technical/scientific expertise in all project phases involving wetland restoration, creation, enhancement and preservation. The Unit understands the role wetland functions and values play in natural ecosystems and how they affect the quality of life for all living things. The staff's combined mitigation experience is 51 years and has a highly successful track record for meeting or exceeding regulatory performance standards and permit requirements. The Mitigation Unit understands the importance of delivering successful, highly productive, cost efficient mitigation projects and is accountable for the functional replacement of unavoidable wetland impacts caused by MaineDOT projects.

10.0 Financial Assurance Requirements

MaineDOT spends on average approximately \$2 million/year on wetland compensation projects. Most of this funding has Federal Highway Administration participation. The financial abilities of MaineDOT to meet the mandated compensatory mitigation obligations have always been a top priority when obtaining and meeting the requirements of a project permit. MaineDOT will continue to provide successful planning, implementation and monitoring to meet the required performance standards for each banked mitigation site.

MaineDOT will provide financial assurances for each bank site as part of individual plans. Acceptable forms of financial assurances will be established in the BI.

